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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition on Behalf of the	)	
Louisiana Public Service	)	PR File No. 94-SP5
Commission for Authority to	)	
Retain Existing Jurisdiction	)	
Over Commercial Mobile Radio	)	
Services Offered Within the	)	
State of Louisiana	)	

TO: The Commission

COMMENTS OF BELLSOUTH CORPORATION IN OPPOSITION TO LOUISIANA PUBLIC SERVICE COMMISSION'S PETITION TO CONTINUE RATE REGULATION OF COMMERCIAL MOBILE RADIO SERVICES

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COMMENTS OF BELLSOUTH CORPORATION IN OPPOSITION TO LOUISIANA PUBLIC SERVICE COMMISSION'S PETITION TO CONTINUE RATE REGULATION OF COMMERCIAL MOBILE RADIO SERVICES

BellSouth Corporation, on behalf of BellSouth Cellular Corp. ("BSCC") and Mobile Communications Corporation of America ("MCCA")(hereinafter referred to as "BellSouth"), files these comments in opposition to the petition filed by the Louisiana Public Service Commission ("LPSC"), pursuant to Section 332(c)(3) of the Communications Act of 1934, as amended, 47 U.S.C. § 332(c)(3) (the "Act"), for authority to continue to regulate rates of commercial mobile radio service ("CMRS") providers in the State of Louisiana.[1/]

[1/] BellSouth owns various subsidiaries which hold and operate B Block cellular licenses in New Orleans, Lafayette, Baton Rouge, and certian Rural Service Areas ("RSAs"), as well as paging systems throughout Louisiana. BellSouth is subject to LPSC jurisdiction and is familiar with the LPSC's regulation and actions.

SUMMARY

The LPSC seeks to continue its current regulation of CMRS providers under which providers must, among other things, file tariffs subject to LPSC approval. It states that its regulation must continue until the CMRS market in Louisiana functions in a "fully" competitive manner. For the reasons explained below, the LPSC has not met the standard under Section 332 of the Act for continuing rate regulation. Accordingly, the LPSC petition should be denied.

Under Section 332 of the Act, Congress preempted state rate regulation of CMRS in order to establish a uniform Federal regulatory framework to govern CMRS. Section 332 allows states to petition to continue their existing rate regulation or to initiate new rate regulation, but there is a substantial burden on a state filing such a petition. The state must show that: (1) "market conditions ... fail to protect CMRS subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory" or (2) "such market conditions exist, and such service is a replacement for ... a substantial portion of landline telephone exchange service" in the state. A state may petition to continue rate regulation in effect only to the extent that it actually

regulated rates as of June 1, 1993. If a state petitions to continue rate regulation by August 10, 1994, it may continue such rate regulation until an FCC denial of its petition has become final.

The LPSC has clearly failed to meet its burden of proof under Section 332. The customer complaints it submits as evidence of market failure are largely irrelevant because in the main they fail to address rate regulation matters; the others either concern events that occurred years ago, are isolated problems that do not show any trend that requires extraordinary LPSC intervention, or do not articulate rate "problems" in the first place. In addition, the instances where it says it has prevented market abuses instead illustrate how LPSC regulation has denied consumers benefits of rate reductions spurred by competition. Indeed, these latter examples show why the LPSC should not be authorized to continue rate regulation. At a minimum, none of this "evidence" shows that there is current market failure in Louisiana.

Attached to this petition is an affidavit of Dr. Richard P. Rozek, an economist with National Economic Research Associates, Inc. ("NERA"). Dr. Rozek explains and demonstrates that state rate regulation in general, and Louisiana rate regulation in particular, has resulted in higher, not lower consumer rates. Dr. Rozek also shows that problems identified by the LPSC in the cellular industry are actually caused by regulation, and are not a justification for continued regulation.

The LPSC also attempts to show that the duopoly market structure for cellular services is evidence of market failure. This showing is unpersuasive because Congress was fully aware of the duopoly market structure in States like Louisiana at the time it enacted Section 332. It still preempted state rate regulation of CMRS. In other words, the LPSC has presented nothing unique about the Louisiana market that would meet the substantial burden established to overcome federal preemption of state rate regulation.

Finally, the LPSC raises a concern that its state's universal service plan may be frustrated by federal preemption of CMRS rate regulation. The LPSC makes no showing, however, to meet the statutory condition precedent (that cellular services in Louisiana are a substitute for landline telephone exchange service for a substantial portion of the communications within the State) that would permit it to continue rate regulation on these grounds.

Therefore, to the extent that the LPSC seeks to continue existing rate regulation in force, its petition should be denied.

DISCUSSION

I. THE 1993 BUDGET ACT ESTABLISHED A COMPREHENSIVE AND UNIFORM REGULATORY FRAMEWORK TO GOVERN THE REGULATION OF COMMERCIAL MOBILE RADIO SERVICES AND IMPOSED A SUBSTANTIAL BURDEN ON STATES SEEKING TO REGULATE RATES.

A. Congress Preempted State Rate Regulation In Favor of a Comprehensive Federal Policy of Minimal Regulation

On August 10, 1993, the U.S. Congress enacted the Omnibus Budget Reconciliation Act of 1993 ("Budget Act"),[2/] which created a new "*Federal regulatory framework* to govern the offering of *all commercial mobile services*." H.R. Rep. No. 103-213, 103rd Cong., 1st Sess. 490 (1993) ("Conference Report") (emphasis added).[3/] Under new Section 332(c)(1)(A) of the Communications Act, 47 U.S.C. § 332(c)(1)(A), Congress "*replaced traditional regulation of mobile services* with an approach that brings all mobile service providers under a *comprehensive, consistent, regulatory framework* and

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[2/] Omnibus Reconciliation Act of 1993, P.L. No. 103-66, Title VI, § § 6002(b)(2)(A) and 6002(b)(2)(B), 107 Stat. 312, 392 (1993).

[3/] The "commercial mobile services" covered by this assertion of federal primacy include cellular, paging, and many Specialized Mobile Radio ("SMR") services, as well as emerging new mobile services, such as PCS, that are interconnected with the telephone network and provide service to the public. 47 U.S.C. § 332(c)(2), (d)(1); *see Regulatory Treatment of Mobile Services*, Gen. Docket 93-252, Second Report and Order, 9 FCC Rcd. 1411, 1468, 74 Rad. Reg. 2d (P&F) 835, 870 (1994) (*CMRS Second Report*).

gives the Commission the flexibility to establish appropriate levels of regulation for mobile radio services providers." *CMRS Second Report*, 9 FCC Rcd at 1417, 74 Rad. Reg. 2d at 841 (1994) (emphasis added).

In Section 332(c)(3), 47 U.S.C. § 332(c)(3), Congress expressly preempted all state rate and entry regulation of CMRS. As discussed below, the statute contains a narrow exception allowing states to petition for authority to regulate rates, but only under limited conditions.

At the same time, Section 332 provides that CMRS providers are deemed common carriers subject to Title II of the Communications Act. However, Congress specifically authorized the FCC to exempt CMRS providers from all but three core provisions to Title II. 47 U.S.C. §332(c)(1)(A). Congress intended by this to allow the FCC to determine the extent to which traditional common carrier regulation was "needed to ensure charges are just and reasonable or otherwise in the public interest." H.R. Rep. No. 93-111, 103rd Cong., 1st Sess. 260-61 (May 25, 1993) ("House Report").[4/]

[4/] Congress specifically intended, among other things, that the FCC have the authority to forbear from tariff regulation of CMRS. The Commission had previously done so for non-dominant interexchange carriers, but its policy was vacated by the D.C. Circuit for lack of statutory authority. *AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992). Section 332 was "intended to give the Commission the authority to reinstate this policy" for (continued...)

B. **The FCC Implemented this Federal Regulatory Framework by Exempting All CMRS Providers From Significant Title II Regulations to Foster Competition**

Since the passage of the Budget Act, the FCC has taken major steps to carry out the Congressional plan for ensuring competitive development of CMRS by minimizing regulation. In the *CMRS Second Report*, the Commission overhauled its regulation of CMRS and established the degree and nature of Title II regulation applicable to CMRS. 9 FCC Rcd at 1413; 74 Rad. Reg. 2d at 839.

Consistent with the statutory objective, the Commission's principal goal was to ensure that unwarranted regulatory burdens are not imposed upon any mobile radio licensees. *Id.* at 1418, 74 Rad. Reg. 2d at 842; *see also* House Report at 261. Using a market power analysis based on the Commission's *Competitive Carrier* decisions,[5/] the

(...continued)
CMRS licensees, to the extent warranted. House Report at 260.

[5/] *Competitive Carrier Rulemaking*, CC Docket No. 79-252, Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979) (*Competitive Carrier Notice*); First Report and Order, 85 FCC 2d 1, 52 Rad. Reg. 2d 215 (1980) (*First Report*); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981) (*Further Notice*); Second Further Notice of Proposed Rulemaking, FCC 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982) (*Second Report*), *recon.*, 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (1983); Third Report and Order, 48 Fed. Reg. 46,791 (1983) (*Third Report*); Fourth Report and Order, 95
(continued...)

Commission determined that all CMRS providers (other than cellular licensees) currently lack market power and that there was "sufficient" competition in the cellular services marketplace to relax some Commission policies traditionally applied to non-competitive markets. *CMRS Second Report*, 9 FCC Rcd at 1470, 1478, 74 Rad. Reg. 2d at 871, 875. *See also Cellular CPE Bundling Order*, 7 FCC Rcd 4028, 4028-29 (1992).

Based on this record, the FCC decided that all CMRS providers, including cellular providers, should be exempt from tariff filings, contract filings, and market entry/exit requirements found in Sections 203, 204, 205, 211, and 214 of the Communications Act. *CMRS Second Report*, 9 FCC Rcd at 1475-81, 74 Rad. Reg. 2d at 874-77. These actions were taken explicitly to promote competition, innovation, market entry and flexibility.[6/]

(...continued)
FCC 2d 554 (1983) (*Fourth Report*), *vacated sub nom. AT&T v. FCC*, 978 F.2d 727 (D.C. Cir. 1992), *rehearing en banc denied*, Jan. 21, 1993; Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984) (*Fifth Report*), *recon.* 59 Rad. Reg. 2d 543 (1985); Sixth Report and Order, 99 FCC 2d 1020 (1985) (*Sixth Report*), *rev'd sub nom. MCI Telecommunications Corp. v. FCC*, 765 F.2d 1186 (D.C. Cir. 1985).

6/ *Id.* The Commission has repeatedly held that the substitution of regulatory considerations for marketplace forces, without a demonstrated public benefit, denies the (continued...)

The Commission said it preferred to rely on competition, rather than regulation, because "[c]ompetition, along with the impending advent of additional competitors, leads to reasonable rates." *CMRS Second Report*, 9 FCC Rcd at 1478, 74 Rad. Reg. 2d at 875. In particular, it decided that tariff regulation of CMRS providers was inappropriate in a competitive environment because:

> tariff filings can (1) take away carriers' ability to make rapid, efficient responses to changes in demand and cost, and remove incentives for carriers to introduce new offerings; (2) impede and remove incentives for competitive price discounting, since all price changes are public, which can therefore be quickly matched by competitors; and (3) impose costs on carriers to ascertain competitors' prices and any changes to rates, which might encourage carriers to maintain rates at an artificially high level. Moreover, tariffs may simplify tacit collusion as compared to when rates are individually negotiated, since publicly filed tariffs facilitate monitoring. ... [W]ith the near-term growth of competition, it is reasonable to conclude, as required by Section

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(...continued)

public the benefits of competitive services in response to public need and business judgment. *Preemption of State Entry Regulation in the Public Land Mobile Service*, 59 Rad. Reg. 2d 1518 (1986) *remanded on other grounds sub nom. NARUC v. FCC*, No. 86-1205, 1987 U.S. App. Lexis 17810 (D.C. Cir. Mar. 30, 1987), clarified, *Preemption of State Entry Regulation in the Public Land Mobile Service*, Memorandum Opinion and Order, 2 FCC Rcd 6434 (1987) (*citing Competitive Carrier, First Report and Order*, 85 FCC 2d 1 (1980), *Fifth Report and Order*, 98 FCC 2d 1191 (1984). *See also Tariff Filing Requirements for Non-Dominant Carriers*, 8 FCC Rcd 8752 (1993), erratum, mimeo 34716, 58 Fed. 48323 (Sept. 15. 1993) (removing or reducing regulatory requirements tends to encourage market entry and lower costs).

> 332(c)(1)(C), that forbearance at this time will "promote competitive market conditions" and will enhance competition among CMRS providers. Conversely, retaining tariffs under these conditions may limit competition.

CMRS Second Report, 9 FCC Rcd at 1479, 74 Rad. Reg. 2d at 876 (citations in text omitted).[7]

C. State Regulation of CMRS Rates is Permitted Only in Limited Cases, When States Make a Substantial Showing that Current Market Conditions Require Rate Regulation for the Protection of Consumers

While the principal intent of the new statute was to create a uniform Federal regulatory scheme, Congress created a narrow exception to Federal preemption of state rate regulation. A state is permitted to continue rate regulation or to initiate rate regulation if it can demonstrate to the FCC that:

> (1) market conditions with respect to such services fail to protect subscribers adequately from unjust and unreasonable rates or rates that are unjustly or unreasonably discriminatory; or
>
> (2) such market conditions exist, and such service is a replacement for landline telephone exchange service for a substantial

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[7] In addition to exempting carriers from the provisions of Title II mentioned above, the Commission also noted that establishing a stable, predictable Federal regulatory environment sends an important signal to the investment community that regulation would not be a burden standing in the way of entrepreneurial opportunities and would instead facilitate prudent business planning. *CMRS Second Report*, 9 FCC Rcd at 1420-22, 74 Rad. Reg. 2d at 843-44.

> portion of telephone landline exchange service within such State.[8/]

The petitioning state has the "substantial" burden of proving that it meets the requirements for either of these exceptions:

> [I]n implementing the preemption provisions of the new statute, we have provided that *states must, consistent with the statute, clear substantial hurdles* if they seek to continue or initiate rate regulation of CMRS providers.

CMRS Second Report, 9 FCC Rcd at 1421, 74 Rad. Reg. 2d at 843 (emphasis added).

To guide states in satisfying this burden, the Commission included in its Rules a detailed list of the types of evidence, information and analysis that it would consider in evaluating a state petition, 47 C.F.R. § 20.13. The Rule makes clear that states cannot overcome the statutory goal of uniform, efficient, minimal federal regulation easily. A state must satisfy its burden of proof with a detailed factual showing regarding the unique local market conditions

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[8/] 47 U.S.C. § 332(c)(3)(A)(i), (ii). Section 332(c)(3)(A) sets forth the standard that states must meet to initiate rate regulation. The standard for continuing the rate regulation engaged in as of June 1, 1993 is the same, except that a state's filing of a petition to do so by August 10, 1994 will automatically continue that regulation in force until the Commission decision to deny it is final, including any reconsideration. 47 U.S.C. § 332(c)(3)(B).

that make state rate regulation essential for the protection of consumers.[9/]

II. THE LPSC'S PETITION TO CONTINUE TARIFF REGULATION SHOULD BE DENIED BECAUSE THE LPSC HAS NOT MET THE STATUTORY BURDEN OF SHOWING THAT CURRENT MARKET CONDITIONS REQUIRE STATE RATE REGULATION FOR THE PROTECTION OF CONSUMERS

Measured against the statutory standard for continuing existing rate regulation,[10/] the LPSC's petition plainly should be denied.[11/] The LPSC seeks to continue its current

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[9/] 47 C.F.R. § 20.13(a),(b).

[10/] The LPSC apparently confuses the standard it must meet to continue existing rate regulation. It states that it is continuing its regulation "for the benefit of Louisiana ratepayers" and that the "continuation of this regulation will not impede the growth and development of competition in this segment of the communications market." LPSC Petition at 2. It adds that "even if the FCC determines that the type of rate regulation ... as of June 1, 1993 is inadequate to support a petition ... the LPSC believes that market conditions with respect to CMRS in Louisiana *may* fail to protect consumers." *Id.* at n. 2 (emphasis added).

As explained in the previous Section, the standard for continuing existing rate regulation is the same standard a petitioner must meet to initiate new regulation. A petitioner must show that current market conditions fail to adequately protect consumers. Therefore, BellSouth will address the merits of the LPSC petition as required under the statute and also to the extent that the LPSC presents evidence that market conditions "may" fail to protect consumers.

[11/] The LPSC repeatedly requests authority to continue regulating CMRS rates until the CMRS market becomes "fully" competitive. *See, e.g.*, LPSC Petition at 22, 36, 43. BellSouth submits that this standard for continuing rate regulation must be summarily rejected (continued...)

system of regulating CMRS through its tariff review and other processes on the ground that CMRS rates in Louisiana "may" or "appear" to be unjust or unreasonable. LPSC Petition at 2. It expresses concerns of "potentially" anticompetitive practices without mentioning any specific instances. *Id.* at 28, 33. It adds that cellular prices "may" be priced above costs, *Id.* at 28, and that cellular carriers "may" be earning super normal profits or charging supra-competitive rates, again without any supporting evidence. *Id.* at 33-34.

At the same time, the LPSC admits that it has collected "*insufficient evidence* regarding the degree and nature of competition in the market and the manner in which the market is managing the rapid growth." *Id.* at 38 (emphasis added). Nevertheless, it states that it should be "allowed" to retain its regulatory authority in order to assess the level of competition and to control rates, as necessary, to compensate for any "discovered" lack of competitiveness resulting in supra-competitive rates to consumers. *Id.*

(...continued)
by the FCC as an overbroad and unreasonable request. As set forth in the previous Section, the legislative history and the Commission decisions implementing Section 332 make clear that the market does not have to be "fully" competitive before it is appropriate to remove the burdens of common carrier regulation, including the filing and review of CMRS tariffs.

These LPSC statements, which form the foundation of its petition, fall very short of meeting the statutory burden under Section 332. Section 332, its legislative history, and the implementing decisions of the FCC speak with a united voice that current market conditions must be shown to inadequately protect consumers, and that such a showing requires a petitioner to make its demonstration based in actual and certain terms. Obviously, the LPSC petition fails on this account.

Indeed, the LPSC petition seeks authority to regulate all CMRS services, including paging services. Its petition, however, contains *no evidence* regarding rate problems or discriminatory conduct on behalf of paging service providers.[12/] The LPSC has made no showing rebutting the FCC's long-standing and repeated findings that paging is a highly competitive market that is characterized by large numbers of service providers, ease of market entry, and ease of changing service providers. *See CMRS Second Report*, 9 FCC Rcd at 1468, *citing* EMCI, "The State of the US Paging Industry" (1990), EMCI, "The State of the US Paging Industry," (1993).

[12/] The only reference made to paging service is the case where A+ Beepers was sanctioned by the LPSC for operating in the state of Louisiana without certification. *See* LPSC Petition at 20, Exhibit 41.

One year has elapsed since the passage of the Budget Act in which the LPSC has had the opportunity to investigate CMRS rates and to assemble evidence that continued regulatory supervision was essential to protect subscribers from unjust, unreasonable or discriminatory rates. The LPSC's inability to provide sufficient evidence, despite having had a reasonable time to gather such evidence, demonstrates that there is no sound basis for granting the LPSC petition. Having failed to carry its burden, the LPSC's petition to continue its tariff and other rate regulation should be denied.[13/]

Indeed, the LPSC petition is so deficient in showing current market failure that if a state could overcome federal preemption with a showing such as this, a dangerous precedent would be established whereby virtually <u>any</u> state could petition the FCC and be granted authority to continue or initiate rate regulation, clearly frustrating

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[13/] The LPSC decided in July 1994 (only one month before its deadline to make a demonstration to continue rate regulation) that it must reassess the rates and practices of cellular carriers in Louisiana to determine "whether" new regulation is needed. Although it correctly notes that it would have to file a separate petition to initiate new regulation, the LPSC wants the FCC to allow it to continue to regulate rates as it has until its investigation is completed. LPSC Petition at 50. There is absolutely no statutory support for continuing rate regulation on these grounds.

Congressional intent. Therefore, the LPSC petition should be denied because of its conditional, uncertain, and inconclusive showing.

A. The LPSC Has Virtually Ignored FCC Rules Specifying the Kind of Evidence Which Would Demonstrate Market Failure

Section 20.13 of the Commission's Rules, 47 C.F.R. § 20.13, sets forth the type of information the Commission expects states to submit in support of their petitions. The LPSC virtually ignores these criteria. In fact, even the material it submitted is almost entirely irrelevant, measured against the FCC Rules and the statutory standard and policies embodied in Section 332.

Section 20.13 lists "specific allegations of fact regarding anti-competitive or discriminatory practices" by CMRS providers in the State. The Rules state that "evidence of a pattern of such rates that demonstrate the inability of the (CMRS) market place in the state to provide reasonable rates through competitive forces will be considered especially probative." 47 C.F.R. § 20.13(a)(2)(vii). The LPSC presents no such information or evidence as part of its demonstration. Indeed, the LPSC openly admits that it is uncertain whether current rates are unjust or unreasonable. LPSC Petition at 2.

Section 20.13 of the FCC's Rules also requires that a petitioner "identify and describe *in detail* the rules the state proposes to establish if the petition is granted." 47 C.F.R. § 20.13 (emphasis added). Instead of complying with this requirement, the LPSC states that it has *no* plans on how to regulate because it is investigating to see *if* rules are required. LPSC Petition at 49. It states that its investigation of the cellular service market in Louisiana "is designed to determine what, *if any,* problems exist in the industry." *Id.* (emphasis added). It adds that "only *if* problems are identified will we enact rules to solve them." *Id.* (emphasis added). Again, this is hardly a showing of a compelling need to continue state rate regulation in the face of alleged market failure.

B. The Material Supplied by the LPSC Does Not Demonstrate Current Market Failure in Louisiana

The material submitted by the LPSC pursuant to Section 20.13 consists mainly of isolated, unsworn customer complaints that either lack relevance to rate regulation or do not relate to anticompetitive or discriminatory pricing. The other submissions by the LPSC consist of self-serving allegations that its regulatory oversight has prevented market abuse. Instead of proving its case, the latter submissions show that the LPSC's oversight has resulted in higher prices and less competition.

The remainder of the LPSC's petition consists largely of arguments against the current industry structure of duopoly and unsupported concerns regarding universal service that are unpersuasive in light of Congressional intent under Section 332. Put simply, the LPSC petition does not demonstrate current market failure in Louisiana which justifies permitting the LPSC's extraordinary involvement into CMRS rate regulation.

i. Customer Complaints Either Lack Relevance to Rate Regulation or Do Not Show Market Failure

The LPSC submitted a number of unsworn, informal complaints involving cellular carriers. It states that because of rising complaints in Louisiana, a reassessment of cellular regulation is needed. These complaints are not responsive to Section 20.13 and do not support continued rate regulation.

First, the informal complaints attached as exhibits to the LPSC petition are not supported by sworn testimony. Indeed, some of the "complaints" exist only as notes of telephone calls taken by LPSC staff.[14/]

Second, many of the complaints noted in the LPSC petition do not involve rate matters in the first place.[15/] The

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14/ *See, e.g.*, LPSC Petition at Exhibits 17, 20.

15/ For instance, the LPSC refers to "customer identity errors" where cellular carriers pursue individuals for payment of charges incurred by others. LPSC Petition at 12. The LPSC states that when alerted to this type of problem it will contact the provider to assess the
(continued...)

LPSC has lumped together all complaints but has not provided a breakdown of the numbers of complaints that relate specifically to rates. Indeed, the LPSC concedes that it has not determined whether there is a widespread problem that evidences current market failure in Louisiana from the complaints it has mentioned. LPSC Petition at 38. The LPSC has thus failed to show that there are trends in customer complaints regarding rates or anticompetitive practices that justifies continuing its tariff regulation.

(...continued)

matter and to ensure that the individual's concerns are addressed properly. *Id.* The LPSC has failed to make any connection between this issue and unjust, unreasonable or discriminatory rates.

In addition, the LPSC refers to "service complaints," *Id.*, while only referring to one instance. Nevertheless, the LPSC concedes that these complaints relate to system coverage concerns. Therefore, they do not involve rate matters.

The LPSC also notes that subscribers have complained about providers' failure to provide itemized bills. *Id.* The LPSC only attaches its order requiring carriers to provide itemized bills to all customers. It does not provide evidence to support why it made this decision in the first place. Again, this evidence is insufficient to show that it relates to *current* market failure.

Finally, to the extent that the FCC may consider any of the above evidence relevant, BCC submits that Sections 201, 202, and 208 of the Communications Act, as well as other organizations, such as the Federal Trade Commission or the state's Better Business Bureau, adequately protect consumers by addressing these matters.

In any event, there are a few complaints cited in the LPSC petition that do address rate matters. For example, the LPSC refers to complaints regarding allegedly excessive roaming charges, mentioning the "Louisiana 8" case. LPSC Petition at 18-19. The complaints underlying the "Louisiana 8" case were raised almost two years ago and, since then, the roaming charges issue has been resolved. Radiofone purchased Louisiana 8 and agreed as the new owner to set its roaming charges at levels consistent with the LPSC's determination as to the rates that should be charged for such services. In context, the "Louisiana 8" case was only an isolated problem involving a single carrier. The LPSC has cited nothing that shows that most carriers have been generally overcharging for roaming services before or after the "Louisiana 8" case. The "Louisiana 8" case is therefore insufficient evidence of *market* failure.

Another area that the LPSC relies on pertains to cancellation charges imposed on customers who wish to break long-term commitments made with their cellular carrier. The LPSC apparently views these charges as evidence of anticompetitive practices. Yet, BellSouth notes that early termination penalties for long-term contracts have been permitted to take effect in FCC tariffs for years. In return for price reductions, customers are generally required to commit to large volumes or long-term contract periods.[16/] The cancellation charges that the LPSC refers to are actually part of procompetitive (output expanding) offerings that make cellular service affordable to an increasing number of consumers.[17/] Thus, the LPSC's objections to cancellation charges and long-term contracts highlights an inconsistency between federal and state regulation that Congress intended to remove when it preempted state rate regulation. In any event, alleged problems with cancellation charges do not justify wholesale rate regulation based on *market* failure.

Finally, the LPSC makes only a conclusory statement pertaining to so-called tying arrangements, saying that "ratepayers have complained about instances in which sellers of telephone equipment have required the equipment customer to purchase cellular services from a particular provider." LPSC Petition at 11. There is no evidence, sworn or

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16/ For example, AT&T's Tariff 12 services and most of its contract tariffs, especially in the 800 services market, contain substantial termination liabilities if a customer wants to get out of the deal prior to the end of the contract period.

17/ Dr. Richard Rozek, in his affidavit attached to these comments, emphasizes the lack of public benefits due to the LPSC limiting output expanding price plans. Rozek affidavit at 8.

unsworn, to support its statement.[18] Nor does the LPSC regulate so-called tying arrangements to justify "continuing" its regulation over them. Therefore, the LPSC has failed to meet the burden of proof under Section 332.

ii. Instances of Rate Regulation Cited by the LPSC Illustrate Why the LPSC Should Not be Authorized to Regulate Rates

The LPSC cites instances where it believes it has acted to protect the public from unjust, unreasonable or discriminatory rates; including its rejection of a proposed waiver of the activation fee for customer conversions to another carrier, LPSC Petition at 11-12, 29, 33, and its rejection of various promotional corporate rate plans *Id.* at 15-17. Rather than prove the LPSC's case, BellSouth submits that these LPSC regulatory actions have denied consumers the benefits of rate reductions spurred by competition and therefore illustrate why the LPSC should *not* be authorized to continue to regulate rates.

For example, interexchange carriers (IXCs) frequently offer promotions to consumers under their FCC tariffs that waive the charges associated with changing a customer's primary interexchange carrier (PIC change charges) in return

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[18] It is not even possible from the LPSC's statement to tell if the LPSC is talking about actions of service providers, much less whether it is a problem that requires extraordinary LPSC involvement.